No. 96527-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GILDARDO CRISOSTOMO VARGAS, an incapacitated person, by and through WILLIAM DUSSAULT, his Litigation Guardian ad Litem; LUCINA FLORES, an individual; ROSARIO CRISOSTOMO FLORES, an individual; and PATRICIA CRISOSTOMO FLORES, a minor child by and through LUCINA FLORES, her natural mother and default guardian,
Petitioners,
v.

INLAND WASHINGTON, LLC, a Washington limited liability company,
Respondent,

and

INLAND GROUP P.S., LLC, a Washington limited liability company, RALPH'S CONCRETE PUMPING, INC., a Washington corporation, and MILES SAND & GRAVEL COMPANY d/b/a CONCRETE NOR'WEST, a Washington corporation;
Defendants

AMICUS CURIAE BRIEF BY WASHINGTON STATE LABOR COUNCIL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Labor Council, AFL-CIO ("WSLC") is the "voice of labor" in Washington. The WSLC represents and provides services to local unions throughout Washington State. There are more than 600 local unions affiliated with the WSLC, representing 450,000 rank-and-file union members working in Washington State. Many of these local unions are for workers in construction trades, including electrical workers, elevator constructors, ironworkers, laborers, plasterers and cement masons, plumbers and pipefitters, roofers, and others. The enforcement of robust workplace safety regulations and culture is vital to the welfare of all Washingtonians. The WSLC advocates for strict compliance with Washington's workplace safety regulations and for strong protections for workers under the common law. These statutory and common law protections are of particular importance on construction sites, which are inherently dangerous workplaces.

Under Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990), these statutory and common law safe workplace duties are non-delegable and placed on general contractors as a matter of law. Moreover, Stute established that general contractors have *per se* control over the workplace by virtue of their innate supervisory authority of the workplace.

Unfortunately, and to the peril of Washington's workers, this Court's recent five to four decision in Afoa v. Port of Seattle (II), 191 Wn.2d 110, 421 P.3d 903 (2018), has called these protections into question. Not only did the Afoa II decision sow confusion in the non-delegable duty doctrine, but it also suggested in dicta that general contractors no longer have *per se* control over their construction sites, and that general contractors' liability would be limited to the extent of their control. If so, the distinction between general contractors and jobsite owners will have been completely erased, the holding in Stute would no longer be good law, and workplace protections for Washington's construction workers will be set back decades.

Of critical importance to the implementation of Stute is the recognition that general contractors are vicariously liable for subcontractors' negligence under Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 313 P.3d 1215 (2013) *review denied*, 179 Wn.2d 1026, 320 P.3d 718 (2014). The WSLC advocates for affirming Stute, including the *per se* control of general contractors, for affirming Millican's holding that vicarious liability applies, and for limiting the undermining of the non-delegable duty doctrine in Afoa II to its facts.

II. INTRODUCTION

Amicus curiae WSLC addresses the Stute line of cases and how affirming general contractors' responsibilities under Stute will keep Washington construction sites safer for workers. Under current Washington Law including Kelley, Stute, and Millican,[1] statutory and safe workplace duties are placed on general contractors as a matter of law. Under Stute, these duties are non-delegable, and general contractors have *per se* control over the workplace, and as explained in Millican, are vicariously liable for damages caused by their breach. It has been almost 30 years since Stute was decided, and over 40 since Kelley. Respondent general contractor Inland Washington LLC ("Inland") seeks to dismantle this law.

Inland claims that its position follows Stute, and acknowledges that "Afoa II had nothing to do with general contractors."[2] Yet, in the guise of affirming Stute, Inland openly calls for this Court to extend Workers' Comp immunity to general contractors by overturning Millican.[3]

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[1] Kelley v. Howard S. Wright Const. Co., 90 Wn.2d 323, 582 P.2d 500 (1978); Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990); Millican v. N.A. Degerstrom, Inc., 177 Wn. App. 881, 313 P.3d 1215 (2013) *review denied*, 179 Wn.2d 1026, 320 P.3d 718 (2014).
[2] Brief of Respondent Inland Washington, Page 5.
[3] *Id.*, Page 16-18.

Washington ranks among the top thirteen safest states in the nation.[4] General contractors and their insurers want to change this by relieving general contractors of their safety duties by erasing the distinction between a general contractor and a mere landowner. Despite its protests to the contrary, Inland urges this Court to not only eliminate the *per se* control of general contractors under Stute, but to apply standards of jobsite control so restrictive they eviscerate the safety obligations of general contractors. Specifically, Inland seeks to apply the standards of Bozung v. Condominium Builders, 42 Wn. App. 442, 711 P.2d 1090 (1985), a pre-Stute Court of Appeals case that even then was a departure from the mandates of Kelley. This would result in more workplace injuries and fatalities as general contractors, the entities in the best position to make job sites safer, would actively *avoid* taking any safety measures out of fear that they would incur duties and liability by doing so. This would make safety on construction sites literally out of control.

Moreover, union jobsites are safer than non-union jobsites.[5] Unions add value to employers as well as workers by promoting

[4] *See* https://aflcio.org/2016/5/26/unions-win-safer-jobs-working-people (Last visited May 6, 2019).

[5] *See* https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/ (Last visited May 6, 2019); https://www.lhsfna.org/index.cfm/lifelines/october-2015/yes-union-construction-

workplace safety and fostering a trained and qualified professional workforce.[6] The position taken by Inland and Amicus Building Industry Association of Washington ("BIAW") would relieve general contractors of all safety responsibilities on their jobsites unless they voluntarily assumed the duties. By conditioning responsibility on control, general contractors would have the perverse incentive to avoid liability by avoiding control of their own jobsites. This would result in a race to the bottom with general contractors hiring the cheapest and fastest subcontractors, which are typically non-union, without any regard for their safety record, their solvency, or the quality of their workers' training.

In addition to resulting in more injuries and fatalities from lack of control over safety by general contractors, the burden of this would fall increasingly disproportionately on the State and the workers. Workers would still be entitled to partial compensation of their losses through their workers' compensation claims through the Department of Labor and Industries (L&I), but L&I would not be able to recover those benefits against general contractors if safety is no longer their responsibility.

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really-is-safer/ (Last visited May 6, 2019); http://www.roofingmagazine.com/are-union-workers-safer/ (Last visited May 6, 2019).

[6] *See e.g.* http://www.wslc.org/workforce-development/ (last visited May 6, 2019). ("We want to be strategic partners in workforce development. Employers are crying out for the right talent, and workforce training is the answer. Through apprenticeship development and joint labor-management training partnerships, we can ensure workers gain portable skills and wage gains while meeting employer needs.")

Workers and their families would suffer from uncompensated non-economic losses. Meanwhile, private liability insurance companies would continue to collect premiums without having to compensate injured workers. Stute has been the law for nearly 30 years. In no published appellate case since Stute has the general contractor in a Stute case been dismissed on summary judgment, yet no "tsunami" of liability has wiped out construction across Washington.[7]

III. SIGNIFICANT FACTS

It is undisputed that Inland was the general contractor on a construction site on which Appellant Gildardo Crisostomo Vargas suffered a severe brain injury when he was hit in the head with the end of a pressurized concrete hose during a concrete pour.[8] It is also undisputed that Mr. Vargas was working for Hilltop Concrete Construction, Inc. ("Hilltop") in the course and scope of his employment at the time of the injury, and that Hilltop was a subcontractor to Inland.

In addition to Inland and Hilltop, there were two other employers involved in the pour: defendant Ralph's Concrete Pumping, Inc.

[7] Brief of Respondent Inland Washington, Page 17 (Inland argues: "The ripple effect could look more like a tsunami, wiping out construction across Washington.")

[8] CP 2455-2458 (Order Granting Plaintiffs' Motion for Partial Summary Judgment); CP 1989-1900 (Accident Investigation Report of Matt Skoog); CP 2001-2012 (Deposition of Gordon Skoog, pages 53-64); CP 2055, 2066-2067 (Deposition of Steve Miller, page 37:2, 60-61); CP 1980-1981, 1987-1988 (Deposition of Tim Henson, pages 24-25 and 98-99).

("Ralph's") and defendant Miles Sand and Gravel Co. d/b/a Concrete Nor'west ("Miles").[9]

Inland's superintendent, Steve Miller, was on site and involved in the decision as to where to set up the pump.[10] Hilltop's owner, Gordon Skoog testified that Mr. Miller "manages the overall safety of the whole project."[11] Mr. Miller also described his job as including "coordinating the job," playing "babysitter when somebody cries," and "solv[ing] problems that arise.[12]

Evidence supports the finding that one or more WISHA violations caused Mr. Vargas's injuries. The manual of the pump truck manufacturer Putzmeister prohibits workers from being in the "danger zone" of twice the radius of the end hose when starting to pump.[13] Mr. Vargas and other Hilltop workers were within this zone when Mr. Howell started pumping after clearing the plug. Failure to include any instruction or training on keeping workers out of the danger zone when starting to pump can be found to violate a number of WISHA provisions regarding training and accident prevention programs.[14] There is evidence that the aggregate rock

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[9] CP 2095 (Deposition of Derek Mansur, page 20.); CP 1908-1912 (Deposition of Anthony Howell).
[10] CP 1902 (Deposition of Anthony Howell, page 16).
[11] CP 1997 (Deposition of Gordon Skoog, page 30:24).
[12] CP 2057 (Deposition of Steve Miller, page 42:2-8).
[13] CP 1964 (Putzmeister Manual, Sec. 2, page 14.); CP 1966 (*Id.* Sec. 2, page 36).
[14] WISHA regulations governing accident prevention programs include WAC 296-155-110, WAC 296-800-140, WAC 296-800-14005, and WAC 296-800-14025. WISHA also

size exceeded the maximum size of one third of the delivery system as specified in WAC 296-155-682 (8)(b)(xv)(C). There are also questions of whether the pump equipment was unsafe for lack of a vibrator and a broken antenna, which implicates WAC 296-155-682 (8)(b)(iii).

Inland first sought summary judgment dismissal in 2015, which was denied by Judge Carol Schapira. Upon Judge Schapira's retirement, the case was transferred to Judge Jeffrey Ramsdell, who granted Inland's *second* motion for summary judgment.[15] The Court of Appeals accepted interlocutory review of this case and set oral argument after the briefing was in, but abruptly reversed its acceptance of review as a result of this Court's decision in Afoa II.

IV. ARGUMENT

1. Safety is the business of general contractors under Kelley; *Per se* control of general contractors under Stute, with vicarious liability as described in Millican, is the law in Washington

In Kelley, this Court found that safety was "the business of a general contractor" and that the "general supervisory functions" were

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requires that safety information and training be provided through safety meetings. WAC 296-800-130, WAC 296-800-13020, and WAC 296-800-13025.

[15] Inland implies this Court should defer to Judge Ramsdell since he was an "experienced trial judge." Supplemental Brief of Respondent Inland Washington, Pages 1 and 17. Yet Inland fails to mention that another experienced trial judge, Judge Schapira, previously *denied* Inland's motion. Regardless of the experience or qualifications of the judge, no deference is given to the trial court on summary judgment. The standard of review is *de novo*. Elcon Constr., Inc. v. E. Wash. Univ., 174 Wn.2d 157, 164, 273 P.3d 965 (2012).

sufficient to establish control over the work and its "authority alone was sufficient to establish [the general contractor's] duty." Kelley, 90 Wn.2d at 331-332. In Stute, this Court established unambiguously that a "general contractor's supervisory authority is *per se* control over the workplace." Stute, 114 Wn.2d at 463-464.

In reaching this conclusion, the Stute Court specifically set out to determine the "question [of] the amount of control necessary to give rise to a duty" in light of the trial court's ruling that "the evidence Stute submitted to prove control amounted to mere supervisory authority and thus, P.B.M.C. had no duty." Id. at 460. The Court reversed summary judgment and found that general contractors have "innate supervisory authority," "*per se* control" and that they owe duties under WISHA as a matter of law. Id. at 464.

The Stute court examined two Court of Appeals decisions where non-delegable duties under WISHA was addressed: Ward v. Ceco Corp., 40 Wn. App. 619, 699 P.2d 814 (1985) and Straw v. Esteem Constr. Co., 45 Wn. App. 869, 728 P.2d 1052 (1986). In the context of a general contractor's employee being injured by the WISHA violations of a subcontractor, Division 1 in Ward found that duties under WISHA were nondelegable. In Straw, Division 3 found that a general contractor did not owe nondelegable duties under WISHA. This Court in Stute rejected

Straw and found that general contractors had *per se* control and owed nondelegable duties under WISHA to all workers on their jobsites. Stute, 114 Wn.2d at 458-460. Although Division 2 had decided Bozung, 42 Wn. App. 442, in this time period as well – after Kelley and before Stute, the Stute Court did not discuss or cite Bozung.

The Stute Court also discussed the distinction between the general duty clause and the specific duty clause under RCW 49.17.060. In Goucher v. J.R. Simplot Co., 104 Wn.2d 662, 709 P.2d 774 (1985), this Court found that the "general duty clause" of RCW 49.17.060 (1) only runs to a general contractor's own employees,[16] but that the "specific duty clause" extends to all employees on the jobsite.[17] The Ward court's finding was in concurrence with that of Goucher, whereas the Straw court found no duty under either clause. The Stute Court followed Goucher, affirmed Ward, and rejected Straw, holding that "Employers must comply

[16] The "general duty clause" in the current statute provides that

> Each employer: (1) Shall **furnish to each of his or her employees** a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees …

RCW 49.17.060 (1) (emphasis added). The statute was revised in 2010 to include gender neutral language, but is otherwise unchanged.

[17] The "specific duty clause" provides that "Each employer: … (2) Shall comply with the rules, regulations, and orders promulgated under this chapter. RCW 49.17.060 (2).

with the WISHA regulations to protect not only their direct employees but all employees on the job site." Stute, 114 Wn.2d at 460.[18]

Respondent Inland and Amicus BIAW misuse the terms "general" and "specific" in their briefs. The BIAW cites Kelley for the proposition that "an employer's duty to other entities' employees only requires compliance with applicable regulations, not a general duty to keep the other employees safe."[19] In fact, the Kelley Court found the general contractor owed:

> a duty to take reasonable care to provide a safe place of work under the common law of tort, under RCW 49.16.030 (which was in effect at the time but has since been repealed), and under the contract between Wright and the owner

Kelley, 90 Wn.2d at 330. The Kelley Court did not address duties under RCW 49.17.060 since the statute was not in effect at the time. The BIAW misconstrues Stute to conclude: "Thus, a general contractor (like all employers on the worksite) owes a *specific and direct* – not a general or vicarious – duty to comply with all WISHA regulations as to all onsite workers." [20] As discussed above, the Stute Court's description of a "specific duty" under WISHA requires an injured worker to show that a

[18] The Supreme Court in Stute observed that it had previously applied this interpretation of the statute in the landowner case of Adkins v. Aluminum Co. of Am., 110 Wn.2d 128, 750 P.2d 1257, 756 P.2d 142 (1988).
[19] Supplemental Brief of Respondent Inland Washington, Page 10.
[20] Amicus Brief of BIAW, Page 10 (italics in original).

specific WISHA regulation caused his injury to recover under the statutory duty, which is distinct from the common law duty described in Kelley.[21] It is also clear that general contractors are vicariously liable for breaches of duties under WISHA by their subcontractors as in described Millican and recognized in Afoa II. Millican v. N.A. Degerstrom, Inc., 177 Wn. App. at 893 and Afoa v. Port of Seattle (II), 198 Wn. App. 206, 393 P.3d 802 (2017) *reversed on other grounds*, Afoa v. Port of Seattle (II), 191 Wn.2d 110, 421 P.3d 903 (2018).[22] Respondent Inland acknowledges that Millican "impos[ed] on a general contractor vicarious liability for a subcontractor's negligence," but seeks that this "Court should not just limit Millican, it should *overturn* Millican."[23] The WSLC respectfully disagrees with Respondent Inland.

2. The law under Kelley, Stute, and Millican should not be replaced by that of the pre-Stute case of Bozung or by the apportionment of nondelegable duties in Afoa II

Not since this Court's 1990 Stute decision has a Washington appellate court upheld the dismissal of claims against a general contractor

[21] In the context of a landowner case, this Court and the Court of Appeals discussed the three distinct duties owed including the statutory duty, the common law duty, and the duty owed to an invitee on premises. Afoa v. Port of Seattle (I), 176 Wn.2d 460, 296 P.3d 800 (2013); Afoa v. Port of Seattle (I), 160 Wn. App. 234, 247 P.3d 482 (2011).

[22] Appellants Vargas discuss vicarious liability under Millican and Afoa II in greater detail on pages 14-16 of their Supplemental Brief.

[23] Supplemental Brief of Respondent Inland Washington, Page 14 (italics in original).

in a construction site injury tort case. As discussed above, the Stute Court overturned the Court of Appeals' decision in Straw. Respondent Inland does not overtly call for this Court to overturn Stute, as it does for Millican. Yet Respondent Inland seeks to replace the law under Stute with the holding in Bozung, under which general contractors would not have *per se* control. Control would have to be proven, which would result in dangerous disincentives for general contractors to actually keep their jobsites under control. In addition to seeking to impose a new and unreasonably restrictive "common work area" element,[24] Respondent Inland cites Bozung for its disclaimer of control.[25] The full passage cited by Respondent Inland shows the Bozung holding is diametrically opposed to the *per se* control of general contractors under Stute:

> Builders' actual supervisory control over Tucci's work, as evidenced by the contract, appears limited to that which is usually reserved to general contractors. Such general contractual rights as the right to order the work stopped or to control the order of the work or the right to inspect the progress of the work do not mean that the general contractor controls the method of the subcontractor's work.

Bozung, 42 Wn. App. at 447, *citing* Restatement (Second) of Torts § 414 Comment C (1965). This language has also been applied in the landowner

[24] Appellants Vargas address this "common work area" argument on pages 16-18 of their Supplemental Brief.
[25] Supplemental Brief of Respondent Inland Washington, Page 20. Inland also denies even having these rights, despite facts to the contrary on the record.

context in Kamla v. Space Needle Corp. 147 Wn.2d 114, 121, 52 P.3d 472 (2002).

The problem with this language, even in the landowner context, and particularly when applied to general contractors, is that there are few, if any, acts or rights of control that can't be fit into one of these categories. The general contractor's ultimate authority – the ability to fire a subcontractor – can be characterized as "the right to order the work stopped." Any presence and activities of general contractor's personnel on site can be categorized as scheduling or mere "inspection" that doesn't show control. Orders and commands become suggestions or recommendations. It would become all too easy for general contractors to obtain summary judgment dismissal based on the testimony of well-prepared witnesses, especially where the interests of the immune subcontractor's management and lead personnel are aligned with those of the general. The ability to categorize rights and activities into these pigeonholes should never be the basis of summary judgment dismissal.[26]

In this Court's five-to-four decision in Afoa II, the majority created what the dissent describes as a "fiction of multiple nondelegable duties." Afoa (II), 191 Wn.2d at 147 (Stephens, J. dissenting). The WSLC shares

[26] The analogous provision of the Restatement (Third) of Torts: Phys. & Emot. Harm § 56, Comment C (2012) still includes some of this language, but tempers it somewhat with language highlighting the "right to control" as well as the exercise of control not provided by in the contract.

the concern of the Afoa II dissent that the majority's "holding renders the nondelegable duty doctrine meaningless." Id. at 134. While Afoa II is a landowner case that can be distinguished on its facts, it remains a source of confusion as to how a non-delegable duty can be apportioned. The WSLC cautions against allowing this fracturing of nondelegable duties to spread to the construction context. In this case, unlike in Afoa II, all potentially liable non-immune defendants have been joined in this action, and are apparently solvent and insured. But allowing such allocation would again create perverse incentives for general contractors to engage fly-by-night or shell companies who are insolvent, uninsured, and unsafe for the purpose of insulating general contractors from responsibility though the allocation of nondelegable duties.

3. This Court should reject calls for judicial activism from Respondent Inland and the BIAW calling for expanded Workers' Compensation immunity for general contractors

Respondent Inland openly calls for this Court to extend Title 51 RCW immunity to general contractors, and acknowledges that its call to abolish vicarious liability would have the same effect.[27] The BIAW suggests a similar result.[28] This directly contradicts RCW 51.24.030, the

[27] Supplemental Brief of Respondent Inland Washington, Page 16. ("If this Court held that the same Workers' Comp immunity applies to general contractors, that would be fair …").
[28] *See* Amicus Brief of BIAW, Pages 17-18.

third party recovery statute, and Washington's policy favoring third party actions. Entila v. Cook, 187 Wn.2d 480, 485, 386 P.3d 1099 (2017). As noted by this court in Moen and in the dissent in Afoa II, the remedy for any perceived unfair or disproportional liability burden on general contractors is for them to seek contribution and indemnity from their subcontractors. Citing Moen, the Afoa II dissent noted:

> As in other multiemployer contexts, the Port may shift liability to the airlines using the indemnification agreement. It is the indemnification agreement that "ensure[s] a party generally will not have to bear financial responsibility for the fault of another." *Moen*, 128 Wn.2d at 761, 912 P.2d 472. The majority needlessly dismantles the nondelegable duty doctrine and RCW 4.22.070 in order to solve a perceived unfairness that does not exist.

Afoa (II), 191 Wn.2d at 153 n. 10 (Stephens, J. dissenting), *citing* Gilbert H. Moen Co. v. Island Steel Erectors, Inc., 128 Wn.2d 745, 912 P.2d 472 (1996).

Respondent Inland and the BIAW argue that Appellants Vargas seek to impose "strict liability" on general contractors,[29] and that doing so would cause a "tsunami, wiping out construction across Washington."[30] When addressing vicarious liability for nondelegable duties of an escalator operator as a common carrier, Division 1 recently dismissed a similar straw man argument, Finding "vicarious liability for the negligence of a

[29] *Id*.
[30] Brief of Respondent Inland Washington, Page 17 (Inland argues: "The ripple effect could look more like a tsunami, wiping out construction across Washington.")

contractor is not strict liability." Knutson v. Macy's W. Stores, Inc., 1 Wn. App. 2d. 543, 547, 406 P.3d 683, 685 (2017). The Restatement (Third) of Torts also describes how vicarious liability is applied for harms caused by breaches of statutory or regulatory obligations, such as those under WISHA:

> An actor who hires an independent contractor for an activity is subject to vicarious liability for physical harm if:
>
> (a) a statute or administrative regulation imposes an obligation on the actor to take specific precautions for the safety of others; and
>
> (b) the independent contractor's failure to comply with the statutory or regulatory obligation is a factual cause of any such harm within the scope of liability.

Restatement (Third) of Torts: Phys. & Emot. Harm § 63 (2012). In 1951 this Court reached a similar result for an elevator operator in Myers v. Little Church by the Side of the Rd., 37 Wn.2d 897, 227 P.2d 165 (1951). The WSLC submits that as a matter of judicial notice, no tsunamis have wiped out the elevators and escalators of Washington as a result of these holdings.

As an example of such a "tsunami," Respondent Inland cites a Seattle Times article and argues that Washington's Condominium Act, RCW Ch. 64.24 makes it "practically impossible to build condos," which "no-doubt" has resulted in "one of the worst affordable-housing crises

[Seattle] has ever seen."[31] Yet another Seattle Times article by one of the same authors tells a different story, attributing the lack of condominium construction to the housing bust and showing record levels of condominium construction planned for the next four years, despite no change in the law. The article explains:

> For years, housing developers could just build apartments instead of condos because the rental market was on fire. Why bother with the risk of condos when rental apartments were easy money? But as a flood of tens of thousands of new apartments washed over the Seattle-area market, rents have essentially stopped rising over the past year.

Mike Rosenberg, "A wave of condos is coming to Seattle and Bellevue for the first time since the housing bust" Seattle Times, Sept. 27, 2018, updated Sept. 28, 2018 (https://www.seattletimes.com/business/real-estate/a-wave-of-condos-is-coming-to-seattle-bellevue-for-the-first-time-since-the-housing-bust/, (last visited May 6, 2019)).

V. CONCLUSION

Appellants Vargas contend that dismissal of their claims against the general contractor, Respondent Inland, in a Stute case is obvious error that was not justified by anything in this Court's Afoa II decision. Appellants Vargas's claims should prevail under existing Washington law under the Stute line of cases. It is Inland and the BIAW who seek radical

[31] Brief of Respondent Inland Washington, Page 17 n.6.

and dangerous changes in the law, including an explicit request to overturn Millican as well as abrogating the law in Stute in favor of the rejected standards under Bozung. Their stated objective is to extend Title 51 RCW immunity to general contractors. Not only would this usurp the role of the legislature in enacting WISHA and Title 51 RCW, it would make construction sites more dangerous by incentivizing general contractors to abandon control of their jobsites, with the resulting losses borne by the workers and the State fund. It is respectfully submitted that this Court reaffirm Stute and its progeny and reverse the erroneous dismissal of the general contractor in this action.

Respectfully submitted this 9th day of May, 2019.

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DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the State of Washington that on today's date, I caused the foregoing Brief of Amicus Curiae Washington State Labor Council to be electronically filed with the Washington State Supreme Court, which will provide notification of such filing to all parties in this matter.

SIGNED this 9th day of May, 2019, at Seattle, WA.

Jennifer Woodward
Paralegal

BARNARD IGLITZIN & LAVITT

May 09, 2019 - 10:25 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96527-7
Appellate Court Case Title:	Gildardo Crisostomo Vargas, et al. v. Inland Washington, LLC, et al.
Superior Court Case Number:	13-2-32219-6

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